DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS, NUMBER 96-0048
CONTROLLED SUBSTANCE EXCISE TAX
For the Period: 1993

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ISSUE

I. Controlled Substance Excise Tax – Liability

Authority: Ind. Code § 6-7-3-5;
Bryant v. State of Indiana, 660 N.E.2d 290 (Ind. 1995);
State of Indiana v. Mohler, 694 N.E.2d 1129 (Ind. 1998);
Elvers v. State of Indiana, 697 N.E.2d 942 (Ind. 1998).

The taxpayer protests the assessment of Controlled Substance Excise Tax.

STATEMENT OF FACTS

On or about April 6, 1993, the taxpayer was arrested by the Jasper County Sheriff's Department for possession of a controlled substance, namely 11,515.5 grams of marijuana. On the same day, a Notice of Levy and Tax Judgment was issued by the Department of Revenue against the taxpayer under the Controlled Substance Excise Tax (CSET). On June 27, 1994, the taxpayer pled guilty to the charge of possession of marijuana in excess of thirty (30) grams and was sentenced by the Jasper Superior Court. A telephone conference was held with the taxpayer's representative on November 16, 1999. Additional information, in the form of a legal memorandum, was to be submitted by the taxpayer's representative on or before November 23, 1999, but no additional information was submitted.

I. Controlled Substance Excise Tax – Liability

DISCUSSION

The taxpayer argues that he was punished for his possession of marijuana in the criminal proceeding and that the assessment of the Controlled Substance Excise Tax (CSET) is in

violation of the Double Jeopardy Clause of the United States Constitution. In support of his argument, the taxpayer cites the Indiana Supreme Court's decision in Bryant v. State of Indiana, 660 N.E.2d 290 (Ind. 1995).

In Indiana, the manufacture, possession, or delivery of marijuana is taxable. Ind. Code § 6-7-3-5. Since no taxes were paid on the marijuana in the taxpayer's possession, the Department of Revenue assessed the tax against the taxpayer and demanded payment. The holding in Bryant is that the assessment of the CSET is a punishment and, therefore, a jeopardy within the double jeopardy clause. Bryant, at 297. It is the second jeopardy that is constitutionally barred. In the Bryant case, the Court found that the CSET was assessed before the jury was sworn in the taxpayer's criminal trial, therefore the tax assessment was the first jeopardy and the criminal trial was the second. Id. at 301. The court upheld the CSET assessment and vacated the criminal convictions. Id. The instant case is similar. The taxpayer was assessed the CSET on April 6, 1993, and the taxpayer pled guilty to the criminal charge on June 27, 1994. The CSET assessment was the first jeopardy and, according to the ruling in Bryant, not barred. Actually, the double jeopardy argument that the taxpayer makes is not valid in this case. The Indiana Supreme Court has held that the Bryant rule that a CSET assessment is punishment for double jeopardy purposes does not apply retroactively. *See* State of Indiana v. Mohler, 694 N.E.2d 1129 (Ind. 1998); Elvers v. State of Indiana, 697 N.E.2d 942 (Ind. 1998). Both the CSET assessment and the criminal conviction in the instant case occurred before the December 27, 1995 decision in Bryant. The CSET assessment against the taxpayer is, therefore, not a jeopardy for double jeopardy purposes. The CSET assessment properly applies to the taxpayer in this case.

FINDING

The taxpayer's protest is denied.

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